

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10493 GAO

MANUEL ROSA,  
Plaintiff

v.

CITY OF BOSTON,  
Defendant

**DEFENDANT CITY OF BOSTON'S MOTION FOR SUMMARY JUDGMENT**

Now comes the City of Boston, Defendant in the above-entitled action, and hereby asks, pursuant to Fed. R. Civ. P. 56(b), that this Honorable Court grant summary judgment in its favor on all remaining counts of the Plaintiff's Complaint directed against it. As grounds therefore, the City of Boston states that:

1. The Plaintiff's claim for Negligent Infliction of Emotional Distress should be dismissed because the Plaintiff has not produced any evidence of physical harm or injury, which is a necessary element of NIED in Massachusetts. Sullivan v. Boston Gas Co., 414 Mass. 129, 132 (1993).
2. The Plaintiff has not made the requisite showing under 42 U.S.C. § 1983 of a violation of his constitutional rights caused by a municipal custom, policy or

practice. Monell v. New York Dep't of Social Serv.,  
436 U.S. 658, 665 n.7 (1978).

3. The Plaintiff's claim of negligent recordkeeping resulting in his arrests should be dismissed because there is no evidence of negligent recordkeeping; the Warrant Management System is not administered by any City of Boston employees; the employees involved were exercising due care in executing a statute, M.G.L. c. 258, § 10(a); all of the alleged activities engaged in by City employees were discretionary functions, M.G.L. c. 258, § 10(b); and the City cannot be held liable for failures to act, M.G.L. c. 258, § 10(j).

In further support of its motion, the City of Boston submits the attached Memorandum of Law and Local Rule 56.1 Statement of Facts.

Respectfully submitted,  
DEFENDANT, City of Boston  
Merita A. Hopkins  
Corporation Counsel

By its attorney:

    /s/ Kenneth J. Forton      
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**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)**

I hereby certify that in a good faith effort to resolve and narrow the issues presented by this motion, undersigned counsel for the Defendant, City of Boston, described the bases of this motion by telephone with counsel for the Plaintiff on January 3, 2006, and that the parties were unable to resolve the issues addressed herein prior to filing of this motion.

1/31/06  
Date

/s/ Kenneth J. Forton  
Kenneth J. Forton